

REMARKS

In response to the above-identified Office Action, Applicant has amended claims 1, 7, 11, 17, 21, and 27 as explained below. In view of these amendments and the following remarks, Applicant hereby requests further examination and reconsideration of the application, and allowance of claims 1-30.

The Office has rejected claims 1-30 under 35 U.S.C. § 101. The Office asserts the claimed invention is directed to non-statutory subject matter because the claims present abstract ideas that lack technical basis citing to *Ex Parte Bowman*, 61 USPQ2d 1665, 1671 (2001). The Office asserts that it is incumbent upon the Applicant to present the use of technology within the body of the claims that shows the use of technology with the claims.

Applicant respectfully traverses the Office's rejection of claims 1-30 under 35 U.S.C. § 101. In accordance with the Office's suggestion, Applicant has amended the claims to recite a seller within the body of the claims. In view of the foregoing remarks, the Office is respectfully requested to reconsider and withdraw the rejection of claims 1-30 under 35 U.S.C. § 101.

The Office has also rejected claims 1-30 under 35 U.S.C. § 112, second paragraph, asserting that in claims 1, 7, 11, and 21 the word "if" in the context of the claims connotes a conditional statement that has both positive and negative alternatives, that the word "system" in claims 11-20 has meanings that can be taken from both statutory classes, and that in claims 5, 15, and 25 the word "substantially" has within its meaning something being largely, but not wholly what is specified. Accordingly, Applicant has amended claims 1, 7, 11, 17, 21, and 27 to remove the word "if" which the Office asserts has both positive and negative alternatives. Additionally, Applicant confirms that claims 11-20 are apparatus claims. Further, Applicant respectfully traverses the Office's objection to the use of the word "substantially" in claims 5, 15, and 25. The term "substantially" is a descriptive term commonly used in patent claims to avoid a strict numerical boundary." *Ecolab, Inc. v. Envirochem, Inc.*, 264 F.3d 1358 (Fed. Cir. 2001). The standard for assessing whether a patent claim is sufficiently definite to satisfy 35 U.S.C. § 112, second paragraph is whether one skilled in the art would understand the bounds of the claim when read in light of the specification. *Exxon v. U.S.*, 265 F.3d 1371 (Fed. Cir. 2001). The Office's attention is

respectfully directed to page 10, lines 3-18 in the above-identified application which discuss the announced and true probabilities and in particular states, “the contingent payment function shown in Eqn. 1 is set to be maximized if and only if the announced probability equals the true probability, *subject to the normalization constraints*” (emphasis added). Accordingly, in view of the foregoing amendments and remarks, the Office is respectfully requested to reconsider and withdraw the rejection under 35 U.S.C. § 112, second paragraph.

The Office has rejected claims 1, 2, 6-12, 16-22, and 26-30 under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 5,794,207 to Walker et al (Walker) in view of US Patent No. 6,529,885 to Johnson (Johnson) and claims 3-5, 13-15, and 23-25 under 35 U.S.C. § 103(a) to Walker in view of Johnson and further in view of US Patent No. 5,608,620 to Lundgren (Lundgren). The Officer asserts that Walker discloses a method for selling a good or service to a buyer (see Walker Abstract): receiving an offer (Conditional Purchase Offer--CPO) for the good or service including at least one criterion from the buyer (see Walker, col. 16, lines 29-45); providing the good or service in response to the offer (see Walker, col. 13, 11-22; and lines 39-49; and col. 22, lines 1-37), the good or service includes at least one condition about the at least one CPO (see Walker, col. 16, lines 29-45), wherein the at least one condition is unsatisfied (altered or modified or edited) when the good or service is provided (see Walker, col. 16, lines 28-30; and col. 22, lines 40+); and receiving a first payment for the good or service if the at least one condition for the CPO is satisfied after the good or service has been provided to the buyer (see Walker, col. 16, lines 3-45; and col. 22, line 1-37). The Office acknowledges that Walker fails to disclose that the CPO transactions are based upon a contingency, but asserts that Johnson discloses carrying out electronic transactions, including electronic drafts wherein payment is based upon a number of contingencies (see Johnson, Abstract, col. 16, line 59 to col. 17, line 35; and col. 18, line 20, to col. 19, line 8) and it would have been obvious for an artisan of ordinary skill in the art at the time of the invention to substantially modify and/or substitute the CPO in Walker with the transaction features of the iTX, iDRAFT™ and iDRAFT-CTM found in Johnson.

Walker, Johnson, and Lundgren, alone or in combination, do not disclose or suggest, “providing the information from a seller in response to the offer, the information includes at least one condition about the at least one contingency, wherein the at least one

condition is unsatisfied when the information is provided . . . receiving a first payment for the information for the seller upon the at least one condition for the contingency being satisfied after the information has been provided to the buyer” as recited in claims 1 and 21 or “a source for the information that provides the information in response to the offer, the information includes at least one condition about the at least one contingency, wherein the at least one condition is unsatisfied when the information is provided . . . a contingent payment processing system that receives a first payment for the information upon the at least one condition for the contingency being satisfied after the information has been provided to the buyer” as recited in claim 11.

The Office’s attention is respectfully directed to FIG. 5 in Walker which describes a process by which a buyer formulates a CPO. As described at col. 16, lines 28-30 in Walker, the formulated CPO may have one condition which states that four out of five conditions must be met for the CPO. In this situation, one of the five conditions is unsatisfied, however as described with reference to FIG. 6 the CPO can be accepted, payment made and the good provided without satisfaction of the remaining unsatisfied condition. In Walker, a payment after the good has been delivered is not based on satisfaction of the remaining unsatisfied condition for a contingency. The Office’s attention is also respectfully directed to col. 22, lines 40+ in Walker which discloses that a partial payment is made when the CPO is bound, however at that point the good is not provided. The good is only provided in Walker when complete payment is received and there is no further payment after the good is delivered based on satisfaction of a condition for the contingency. Like Walker, neither Johnson nor Lundgren disclose or suggest the invention as claimed.

As set forth on page 3, line 27 to page 4, line 2 in the above-identified patent application, the present invention also makes it more likely that more contingent information goods will be transacted between sellers and buyers by tying at least a portion of the payment made to a seller to the satisfaction of a condition. If the condition is not met, then the seller may receive a reduced payment or no payment at all. Accordingly, the incentives for the seller are more in line with the incentives for the buyer.

In view of the foregoing remarks, the Office is respectfully requested to reconsider and withdraw the rejections of claims 1, 11 and 21. Since claims 2-10 depend

from and contain the limitations of claim 1, claims 12-20 depend from and contain the limitations of claim 11, and claims 22-30 depend from and contain the limitations of claim 21, they are distinguishable over the cited references and patentable in the same manner as claims 1, 11 and 21.

Additionally, Walker, Johnson, and Lundgren, alone or in combination, do not disclose or suggest, "adjusting an amount for the first payment based on a probability that the condition for the contingency will occur" as recited in claim 3, "the first payment processing system adjusts an amount for the first payment based on a probability that the condition for the contingency occurs" as recited in claim 13, or "adjusting an amount for the first payment based on an announced probability that the condition for the contingency will occur" as recited in claim 23. Again, none of the cited references teach or suggest providing a good to a buyer with one or more unsatisfied conditions when the good is provided where a payment is based on satisfaction of the condition after the good is provided, let alone making adjustments to the amount of the subsequent payment based on any probabilities of whether one or more conditions for the contingency will be satisfied. In view of the foregoing remarks, the Office is respectfully requested to reconsider and withdraw the rejection of claims 3, 13 and 23.

In view of all of the foregoing, it is submitted that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

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